

Marvin E. McGraw appeals the post-conviction court's denial of his petition for post-conviction relief. On appeal, McGraw raises two issues, which we restate as whether the post-conviction court erred by denying his petition for post-conviction relief.¹ We affirm.

The relevant facts follow. As a result of his actions with a thirteen-year-old girl in July 1996, the State charged McGraw with sexual misconduct with a minor as a class B felony and sexual misconduct with a minor as a class C felony. McGraw v. State, No. 01A02-9902-CR-86, slip op. at 2 (Ind. Ct. App. Nov. 17, 1999), reh'g denied, trans. denied. McGraw pleaded guilty, and the trial court sentenced him to consecutive sentences of twenty years in the Indiana Department of Correction on the class B felony and eight years on the class C felony. Id. at 3. In McGraw's direct appeal, he argued that: (1) the trial court abused its discretion by denying his motion to withdraw his guilty plea; (2) the plea agreement was not properly entered; (3) the trial court did not sentence McGraw in accordance with the plea agreement; and (4) the trial court abused its discretion in sentencing McGraw to the maximum sentence. Id. at 2. We affirmed, except that we remanded to the trial court with instructions to abide by the terms of the plea agreement and sentence McGraw to concurrent terms. Id. at 8.

¹ In his "Statement of the Issues Presented for Review," McGraw raises whether his trial counsel was ineffective as an issue. Appellant's Brief at 2. However, McGraw makes no argument concerning this issue. Consequently, the issue is waived. See, e.g., Cooper v. State, 854 N.E.2d 831, n.1 (Ind. 2006) (holding that the defendant's contention was waived because it was "supported neither by cogent argument nor citation to authority").

In 2006, McGraw filed a pro se petition for post-conviction relief, arguing that: (1) the trial court committed reversible error in violation of Ind. Criminal Rule 4(C) by failing to bring McGraw to trial within one year; (2) the trial court committed error when it allowed the State to amend the charging informations; (3) McGraw was denied the effective assistance of trial counsel; and (4) his guilty plea was not knowingly and intelligently waived. The post-conviction court summarily denied McGraw's petition for post-conviction relief.²

The issue is whether the post-conviction court erred by denying McGraw's petition for post-conviction relief. The petitioner in a post-conviction proceeding bears the burden of establishing grounds for relief by a preponderance of the evidence. Fisher v. State, 810 N.E.2d 674, 679 (Ind. 2004); Ind. Post-Conviction Rule 1(5). When appealing from the denial of post-conviction relief, the petitioner stands in the position of one appealing from a negative judgment. Id. On review, we will not reverse the judgment unless the evidence as a whole unerringly and unmistakably leads to a conclusion opposite that reached by the post-conviction court. Id.

McGraw's sole argument on appeal is that he was entitled to post-conviction relief on his claims that: (1) he was entitled to discharge under Ind. Criminal Rule 4(C); and (2) the trial court abused its discretion by allowing the State to amend the charging information. We conclude that McGraw's arguments fail.

² The order was not included in McGraw's appendix.

“When a judgment of conviction upon a guilty plea has become final and the defendant seeks to reopen the proceedings, the inquiry is ordinarily confined to whether the underlying plea was both counseled and voluntary.” Neville v. State, 663 N.E.2d 169, 172 (Ind. Ct. App. 1996). On appeal, McGraw does not raise his issues in the context of an ineffective assistance of counsel claim or in the context of a claim that his guilty plea was involuntary. The freestanding issues that he raises concerning Ind. Criminal Rule 4(C) and the amendment of the information were waived as a result of his guilty plea. See, e.g., Lawson v. State, 498 N.E.2d 1212, 1213 (Ind. 1986) (“The right to have a trial expeditiously cannot exist or be enforced apart from the right to trial and any claim of a denial thereof is waived upon a plea of guilty.”); Branham v. State, 813 N.E.2d 809, 811 (Ind. Ct. App. 2004) (“A defendant cannot question pre-trial orders after a guilty plea is entered.”); Neville v. State, 663 N.E.2d 169, 172 (Ind. Ct. App. 1996) (holding that a petitioner’s post-conviction challenge to the trial court’s ruling on a motion to suppress was “foreclosed by the decision to plead guilty”). Consequently, McGraw has waived these claims, and the post-conviction court did not err by denying McGraw’s petition for post-conviction relief. See, e.g., Neville, 663 N.E.2d at 172.

For the foregoing reasons, we affirm the post-conviction court’s denial of McGraw’s petition for post-conviction relief.

Affirmed.

BARNES, J. and VAIDIK, J. concur